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FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
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BY D. MARK JONES, CLERK
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June 6, 2007

Mr. D. Mark Jones
Clerk
United States District Court for the District of Utah
350 South Main Street
Room 204
Salt Lake City, UT 84101

Re: 06-4228, Nazaruk v. eBay, Inc.
Dist/Ag docket: 2:06-CV-242-DAK

Dear Mr. Jones:

Enclosed for the clerk of the trial court or the named agency, is a certified copy of the order and judgment filed in this case which is issued as the mandate of this court. See Fed. R. App. P. 41(a). Please file it in the records of your court or agency.

Please contact this office if you have questions.

Sincerely,

Elisabeth A. Shumaker
Clerk, Court of Appeals

By:
Deputy Clerk

clk:at

cc:
Tetyana Nazaruk
Michael G. Rhodes
Benjamin Chapman
Lori R.E. Ploeger
Cameron L. Sabin
Donovan S. Robertson
Steven Kuhnhausen

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F I L E D
United States Court of Appeals
Tenth Circuit

May 15, 2007

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

TETYANA NAZARUK,

Plaintiff-Appellant,

v.

eBAY, INC.; ACE COINS,

Defendants-Appellees,

and

ROBERT BAGANZ,

Defendant.

No. 06-4228
(D.C. No. 2:06-CV-242-DAK)
(D. Utah)

A true copy
Teste
Elisabeth A. Shumaker
Clerk, U.S. Court of
Appeals, Tenth Circuit
By
Deputy Clerk

ORDER AND JUDGMENT*

Before **McCONNELL**, **PORFILIO**, and **BALDOCK**, Circuit Judges.

Tetyana Nazaruk filed this action against eBay, Inc., Ace Coins, and Robert Baganz, asserting violations of 42 U.S.C. § 1983 and § 1985. The district court adopted the magistrate judge's recommendation that eBay's motion to dismiss for improper venue be granted because eBay's User Agreement, the operative document governing the relationship between Ms. Nazaruk and eBay, contained a forum-selection clause (Santa Clara County, California) that was both enforceable and mandatory. The court also adopted the magistrate judge's recommendation that Ace Coins' motion to dismiss for failure to state a claim be granted because Ms. Nazaruk's complaint failed to allege facts sufficient to support the elements of a § 1983 or § 1985 claim. This appeal followed.[1]

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Liberally construing Ms. Nazaruk's pro se appellate brief, *see de Silva v. Pitts*, 481 F.3d 1279, 1284 n.4 (10th Cir. 2007) (citing *Cummings v. Evans*, 161 F.3d 610, 613 (10th Cir. 1998)), she asserts—as far as we can discern—the district court's decision was erroneous because: (1) neither the magistrate judge nor the district court judge was impartial, (2) Mr. Baganz was dismissed without appearing at the hearing on eBay's motion to dismiss, (3) information about corruption, money laundering, and non-payment of taxes was ignored, (4) her request for a protective order was ignored, (5) Ace Coins' attorney did not appear at the hearing on eBay's motion to dismiss, (6) she filed documents "prov[ing] the . . . collusion and cooperation in national [origin] discrimination . . . between

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[1] The record does not contain any evidence Ms. Nazaruk served Mr. Baganz with a summons and complaint. Accordingly, the district court dismissed him without prejudice and he is not a party to this appeal.

Ebay inc [sic] and Ace [C]oins," Aplt. Br. at 2, and (7) the "[d]efendants abolished the Constitution of the United States" and discriminated against her based on her national origin, *id.* at 3.

Our jurisdiction arises under 28 U.S.C. § 1291. We review de novo the district court's dismissal for improper venue under Fed. R. Civ. P. 12(b)(3). *See Riley v. Kingsley Underwriting Agencies, Ltd.*, 969 F.2d 953, 956 (10th Cir. 1992). We apply the same standard of review to the district court's dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6). *Johnson v. Johnson*, 466 F.3d 1213, 1214 (10th Cir. 2006); *see also Oxendine v. Kaplan*, 241 F.3d 1272, 1275 (10th Cir. 2001) ("[D]ismissal of a pro se complaint for failure to state a claim is proper only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend." (quotation omitted)). We review for plain error Ms. Nazaruk's contention the district court was not impartial where, as here, no motion to recuse was filed. *See United States v. Nickl*, 427 F.3d 1286, 1297-98 (10th Cir. 2005).

Having reviewed the briefs, the record, and the applicable law pursuant to the above-mentioned standards, we hold Ms. Nazaruk has not identified any reversible error in this case. Accordingly, we **AFFIRM** the judgment of the district court for substantially the same reasons as stated in the magistrate judge's thorough report and recommendation dated August 24, 2006.

Entered for the Court

John C. Porfilio
Circuit Judge